

## Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MEXICO CITY PRIORITY

UNCLAS STATE 123748

E.O. 11652: N/A

TAGS: CASC, MX

SUBJECT: CONGRESSIONAL HEARINGS ON AMERICAN PRISONERS;  
LEGAL PROCEDURES

REF: MEXICO 4543

1. IN ADDITION TO ACTIONS PREVIOUSLY INITIATED (E.G., PARAS. 2A AND 2B OF REFTEL), WE WOULD APPRECIATE EMBASSY ASKING LIC. MENDOZA AND/OR HAVING CONSULAR SECTION PREPARE ANSWERS TO QUESTIONS LISTED BELOW ON MEXICAN LEGAL PROCEDURES AND POSSIBLE REMEDIES FOR ALLEGED VIOLATIONS OF THOSE PROCEDURES. WE RECOGNIZE DIFFICULTIES THIS REQUEST ENTAILS AT THIS TIME, BUT WE BELIEVE THAT MANY OF QUESTIONS RAISED BELOW ARE ALREADY UNDER CONSIDERATION BY MENDOZA IN HIS CURRENT STUDIES OF MEXICAN LEGAL PROCEDURES AND THAT THESE QUESTIONS WILL SERVE AS CHECKLIST. HIS ANSWERS AND GUIDANCE, IF COMPLETED AND TRANSLATED IN TIME, WILL BE VERY HELPFUL FOR OUR PREPARATIONS FOR NEXT (EXECUTIVE) SESSION WITH HOUSE SUB-COMMITTEE. QUESTIONS FOLLOW:

1) INTERPRETERS/TRANSLATORS FOR PRELIMINARY INTERROGATION. WHAT ARE ESTABLISHED PROCEDURES AND REQUIREMENTS FOR UNCLASSIFIED

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INSURING THAT COMPETENT INTERPRETERS AND TRANSLATORS ARE PRESENT DURING INTERROGATION WHEN DETAINEE DOES NOT SPEAK OR READ SPANISH? ARE REMEDIES AVAILABLE TO DETAINEES WHO ALLEGE THEY DID NOT KNOW CONTENTS OF STATEMENTS THEY

SIGNED OR WHO ALLEGE ORAL STATEMENTS INCORRECTLY TRANSCRIBED?

2) PHYSICAL ABUSE DURING INTERROGATION. WHAT REMEDIES ARE OPEN TO DETAINEE WHO ALLEGES PHYSICAL ABUSE AND TORTURE TO FORCE CONFESSION OR SIGNED SELF-INCRIMINATING STATEMENT? CAN HE COMPLAIN OF MISTREATMENT TO TRIAL JUDGE? WILL COURT ACCEPT RETRACTION OF STATEMENT? CAN DETAINEE INSTITUTE CIVIL SUIT? SEEK WRIT OF AMPARO? IF DETAINEE TAKES SUCH STEPS, WHAT IS NORMAL RELIEF ALLOWED BY REGULAR COURT OR COURT OF AMPARO?

3) AUTHORITY TO HOLD PRISONERS INCOMMUNICADO. WHAT IS LEGAL BASIS FOR HOLDING PERSON ARRESTED IN FLAGRANTE DELICTO INCOMMUNICADO FOR INDEFINITE PERIOD OF INVESTIGATION OR AT LEAST LONGER THAN 72 HOURS? HOW IS SUCH DETENTION RECONCILED WITH PROVISIONS OF US-MEXICAN CONSULAR CONVENTION WHICH GIVES US CITIZEN RIGHT "AT ALL TIME" TO COMMUNICATE WITH CONSUL.

4) EXPLANATION OF RIGHTS. IN CASE OF ARREST, WHETHER ON WARRANT OR IN FLAGRANTE DELICTO, WHAT ARE REQUIREMENTS THAT ARRESTING OFFICER INFORM ARRESTEE OF HIS RIGHTS? WT ARE THESE RIGHTS? ARE THEY EXPLAINED TO ARRESTEE ROUTINELY OR ONLY IN RESPONSE TO QUESTIONS BY ARRESTEE?

5) NOTIFICATION OF ARREST. UNDER MEXICAN LAW IS THERE ANY REQUIREMENT THAT POLICE NOTIFY ANYONE WHEN ARREST TAKES PLACE? BY WHAT PROCESS DOES INFORMATION ABOUT ARREST GET TO LAWYERS SUCH AS AVILES AND PRESS BEFORE CONSULAR OFFICERS ARE NOTIFIED?

6) COMMUNICATION. WHAT ARE ARRESTEE'S RIGHTS TO COMMUNICATE WITH FAMILY AND FRIENDS, EITHER BY PHONE OR MAIL?

7) RIGHT TO LEGAL COUNSEL. AT WHAT POINT IS ARRESTEE ALLOWED TO COMMUNICATE WITH LAWYER AND RECEIVE LEGAL UNCLASSIFIED

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ADVICE? IS HE INFORMED OF THIS RIGHT? HOW CAN ARRESTEE OBTAIN NO-COST PUBLIC DEFENDER? IF ARRESTEE IS DISSATISFIED WITH ONE PUBLIC DEFENDER, CAN HE PETITION FOR APPOINTMENT OF ANOTHER?

8) SEIZURE OF PERSONAL PROPERTY AT ARREST. POLICE ALLEGEDLY SEIZE ARRESTEE'S MONEY, CAMERA AND OTHER PROPERTY. WHAT ARE REQUIREMENTS FOR GIVING HIM RECEIPT? TO WHAT EXTENT IS ISSUING RECEIPTS STANDARD PRACTICE? WHEN AND HOW CAN ARRESTEE OR HIS AGENT RECLAIM PROPERTY?

9) PROLONGED PRE-TRIAL CONFINEMENT. WHAT IS LEGAL REMEDY FOR PERSON DETAINED MORE THAN ONE YEAR WITHOUT TRIAL? WHY

ARE SOME DETAINEES HELD FOR MORE THAN ONE YEAR?

10) COURT PROCEDURES. IS DEFENDENT INFORMED BY AUTHORITIES THAT HIS TRIAL PROCESS HAS BEGUN? IS HE EVER PHYSICALLY BROUGHT INTO PRESENCE OF JUDGE? HOW CAN DETAINEE PRESENT EVIDENCE ON HIS OWN BEHALF TO COURT?

11) ACCESS TO COURT RECORDS. DOES DETAINEE HAVE RIGHT TO BE INFORMED OF EVIDENCE PROSECUTOR IS PRESENTING TO COURT AGAINST HIM? CAN HE PERSONALLY REVIEW FILE OR DOES ONLY ATTORNEY HAVE ACCESS TO PROSECUTION MATERIAL? IF DEFENDENT DOES NOT UNDERSTAND SPANISH, IS PROVISION MADE DURING TRIAL PERIOD FOR TRANSLATOR OR INTERPRETER FOR HIM SO HE CAN UNDERSTAND WHAT EVIDENCE IS BEING PRESENTED AGAINST HIM?

12) ALLEGED DENIALS OF DUE PROCESS. IS IT COMMON OR INFREQUENT OCCURRENCE FOR DEFENDENT TO PETITION TRIAL JUDGES ALLEGING DENIAL OF DUE PROCESS? WHAT IS RECORD OF PETITIONS FOR WRITS OF AMPARO FOR DENIALS OF DUE PROCESS?

13) ALLEGED POLITICAL INFLUENCE ON ATTORNEYS. SOME PRISONERS CLAIM DIFFICULTY IN OBTAINING GOOD ATTORNEY STEMS FROM UNSPECIFIED "POLITICAL PRESSURE" ON ATTORNEY. IS THERE ANY EVIDENCE THAT POLITICAL INFLUENCE IS EXERTED FROM ANY SOURCE ON ATTORNEYS NOT TO ACCEPT DRUG OFFENDERS AS CLIENTS? INGERSOLL

UNCLASSIFIED

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